

EXHIBIT 12-A

TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-PE-06-____

FOR _____, MONTANA, FOR PRELIMINARY ENGINEERING FOR
_____ SYSTEM IMPROVEMENTS

This Contract is entered into by _____, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for preliminary engineering costs associated with the planning of _____ system improvements.

Section 2. AUTHORITY

The Contract is issued under the authority of Title 90, Chapter 6, part 7 of Montana Code Annotated and the Administrative Rules of Montana, Title 8, Chapter 94, subchapter 38.

Section 3. APPLICATION INCORPORATED BY REFERENCE

The Grantee's application for Treasure State Endowment Program (TSEP) preliminary engineering report (PER) assistance is incorporated into this Contract by reference and the representations made in the application are binding upon the Grantee.

Section 4. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the TSEP program.
- (c) The Grantee acknowledges that the Department will review the preliminary

engineering report only to the extent necessary to ensure that the information presented in the PER meets the basic requirements of the most recent edition of the *Uniform Preliminary Engineering Report for Montana Public Facility Projects* outline.

- (d) The Grantee further acknowledges that the funding of the PER under this Contract does not imply the Department's approval or endorsement of the PER's contents and will have no influence on the Department's ranking of a subsequent application from the Grantee for a TSEP construction grant.

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract. The Grantee will have until October 1, 2006 to complete the work described in Section 6. SCOPE OF WORK. The Department may grant an extension for completion upon request and showing of good cause by the Grantee. A request for an extension must be submitted at least 45 days prior to the date noted above.

Section 6. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Grantee's application for TSEP grant assistance. The primary product of this Contract will be the preparation of a PER, which meets the requirements, and generally follows the format, of the most recent edition of the *Uniform Preliminary Engineering Report for Montana Public Facility Projects* outline, and that will include a completed Uniform Environmental Checklist that will become an attachment to the PER. The completed PER will be submitted to the Department.

Section 7. COMPENSATION AND CONSIDERATION

- (a) The Department will use funds appropriated by the 59th Legislature from the Treasure State Endowment Special Revenue Account as authorized by 90-6-710(1), MCA.
- (b) The Department agrees that once revenues from the Treasure State Endowment Special Revenue Account are available, it will reimburse the Grantee for successfully completing the activities set forth in Section 6. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds, the Department will reimburse all eligible expenses that have been incurred and that are clearly and accurately supported by documentation submitted by the Grantee. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) The Department will authorize the Grantee to draw up to \$_____ against the TSEP funding awarded to the Grantee.

- (d) The Grantee agrees to contribute, in local non-grant funds, no less than the amount provided by the Department towards the cost of completing the activities set forth in Section 6. SCOPE OF WORK.
- (e) Prior to final payment, the Grantee agrees to submit a certification to the Department showing the sources of all funds that the Grantee has expended in the preparation of the PER. The Grantee understands that the final payment by the Department will be based upon the amount expended by the Grantee, so that the Grantee has expended an amount equal to the amount provided by the Department.
- (f) The Department will reimburse the Grantee a maximum of 50% of the total grant amount for incurred expenses within 30 days of receipt of an approved draft PER. The draft report shall address each item required in the PER outline as presented in the most current edition of the Uniform Application for Montana Public Facility Projects. The draft report must show clearly that all applicable items required for a PER are being addressed and that the engineer is adequately proceeding toward the preparation of a complete and acceptable final product.
- (g) The Department will reimburse the Grantee the balance of the grant within 30 days of receipt of an approved final PER for any additionally incurred expenses not claimed in the first payment. The final version of the PER shall be complete and shall address all requirements of the PER outline as presented in the most current edition of the Uniform Application for Montana Public Facility Projects, including the Uniform Environmental Checklist.
- (h) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.
- (i) Any authorized funds not expended under this grant will revert to the Department.

Section 8. LIAISON

Richard Knatterud, TSEP Engineer, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. _____, is the Grantee's liaison with the Department.

Section 9. ASSURANCES

- (a) The Grantee will comply with all requirements established by the Department; applicable state and federal laws, regulations, administrative directives and procedures, and local ordinances and resolutions.

- (b) The Grantee agrees that all contracts entered into by it for the completion of activities described in Section 6. SCOPE, will contain provisions requiring subcontractors to comply with all applicable state and federal requirements.
- (c) The Grantee expressly agrees to repay to the Department any funds advanced to the Grantee under the Contract which the Grantee, its subcontractors or sub-recipient entities, or any public or private agent or agency to which it delegates authority to carry out portions of this Contract expends in violation of the terms of the Contract or the state statutes and regulations governing the TSEP program.
- (d) The Grantee acknowledges that the Department will review the preliminary engineering report only to the extent necessary to ensure that the information presented in the PER meets the basic requirements of the most recent edition of the *Uniform Preliminary Engineering Report for Montana Public Facility Projects* outline.
- (e) The Grantee further acknowledges that the funding of the PER under this Contract does not express or imply the Department's approval or endorsement of the PER's contents and will have no influence on the Department's ranking of a subsequent application from the Grantee for a TSEP construction grant.

Section 10. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in _____, Montana.
- (b) The Grantee will retain all of the project related records for three years after the final closeout of the TSEP grant.
- (c) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

Section 11. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Contract will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of

race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

Section 12. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 13. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 14. MODIFICATION OF CONTRACT

This Contract may not be enlarged, modified, or altered except upon written agreement, and does not express or imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

Section 15. HOLD HARMLESS AND INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of

actions of any kind or character, including the cost of defense thereof, arising in favor of the Grantee's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Grantee and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under the Contract.

Section 16. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.
- (b) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 17. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Grantee accepts responsibility for the adherence to the Montana Workers' Compensation Act by subcontractors or subrecipient entities and shall ensure that all subcontractors or subrecipient entities provide proof of workers' compensation insurance or exemption from the need for such insurance while performing work under this Contract. Neither the Grantee nor its employees are employees of the State.

Section 18. UNAVAILABILITY OF FUNDING

The Department may, at its sole discretion, terminate or reduce the scope of the Contract if available funding is eliminated or reduced for any reason.

Section 19. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning this Contract, venue shall be in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

Section 20. NO ARBITRATION

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

Section 21. ASSIGNMENT, TRANSFER AND SUBCONTACTING

The Grantee shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Department.

Section 22. INCONSISTENCY WITH APPLICATION GUIDELINES

In the event of inconsistencies or contradiction between language contained in the Department's Application Guidelines and a Grantee's response, the language contained in the Department's Application Guidelines prevails.

Section 23. NOTICE

All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

Section 24. SEPARABILITY

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

Section 25. REFERENCE TO CONTRACT

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

Section 26. INTEGRATION

The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

(Grantee)

Department of Commerce

(Name)

(Title)

David Cole, Administrator

Community Development Division

Date: _____

Date: _____